



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 21st day of November, 1995

SERVED: November 21, 1995

VIRGIN ATLANTIC AIRWAYS, LTD.

Violations of 49 U.S.C. § 41712
and 14 CFR Part 399

CONSENT ORDER

This consent order concerns violations by Virgin Atlantic Airways, Ltd. ("Virgin Atlantic"), of 49 U.S.C. § 41712 and the portion of Part 399 of the Department's regulations that deals with full-fare advertising requirements (14 CFR Part 399). This order directs Virgin Atlantic to cease and desist from future violations and to pay compromise civil penalties.

Virgin Atlantic promulgated or caused to be promulgated a series of fare advertisements that recently appeared in the carrier's home page on the Internet's World Wide Web at the <http://www.fly.virgin.com/atlantic> address.¹ In one instance, the Internet advertisement listed a set of fares to London from New York (Newark). Included among those fares was a "21 day APEX" fare of \$499 for a weekday roundtrip flight during certain travel periods. Separately, in a section above the listed price, the advertisements stated among other things, "Please check with reservations or your local travel agent for latest fare, availability and any taxes, charges or restrictions." Other city-pair points on Virgin Atlantic's home page had a similar layout and disclaimer.

In a telephone call to Virgin Atlantic, the Office of Aviation Enforcement and Proceedings' ("Enforcement Office") investigator was told that the listed "21 day APEX" fare of \$499 was not available then and that the lowest fare-which was "on

¹ Virgin Atlantic reports that its rate pages on the Internet were accessed 2,510 times by U.S.-based computer users from the time the pages were initiated until they were voluntarily removed by the carrier on August 2, 1995, following notification from the Office of Aviation Enforcement and Proceedings of the investigation that led to this consent order.

sale"--was \$518. In addition, the investigator was told that the advertised fare did not include \$38.91 in unspecified "taxes."

As presented, the Internet advertisement violated section 399.84 of the Department's regulations (14 CFR 399.84) which states that "any advertising or solicitation by a direct air carrier, indirect air carrier, or an agent of either, for passenger air transportation, a tour . . . or a tour component . . . that states a price for such air transportation, tour, or tour component [is considered] to be an unfair or deceptive practice, unless the price stated is the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component." Any violation of 14 CFR 399.84 also constitutes a violation of 49 U.S.C. § 41712 which prohibits "unfair or deceptive practices or unfair methods of competition."

Our enforcement policy permits the separate listing in fare advertisements of taxes and fees imposed or approved by government entities on a per-passenger basis--including passenger facility charges ("PFC's")--if the advertisement clearly indicates both the nature and amount of these charges and that they must be paid. However, Virgin Atlantic's Internet advertisements failed to disclose both the type and amount of the applicable taxes and fees. A general statement regarding additional charges such as the one included in the advertisements that are the subject of this order is insufficient notification of per-passenger taxes and fees under our enforcement policy. Furthermore, a least one Internet advertisement listed a fare that was not available at the advertised price, which constitutes a separate violation of the statute and our regulations.

In mitigation, Virgin Atlantic states that it did not intend to mislead any Internet users as to available fares. Virgin Atlantic also states that the Internet advertisements at issue were all promulgated and keystroked from England with the disclaimer that users should "check with reservations or your local travel agent for latest fares, availability and taxes, changes or restrictions" and asserts that the persons responsible for the advertisements believed in good faith that such a disclaimer was sufficient notice to passengers. Finally, Virgin Atlantic notes that it ceased featuring specific U.S. dollar rates in its Internet advertisements as of August 2, 1995, and that it does not intend to mention any specific U.S. dollar rates in Internet advertisements unless and until it develops a programming system which reliably links actual reservation system data to the Internet.

The Enforcement Office has considered the information provided by Virgin Atlantic but continues to believe that enforcement action is warranted. Accordingly, the Enforcement Office and Virgin Atlantic have reached a settlement of this matter, under which Virgin Atlantic consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 or section 399.84 of the Department's regulations in order to avoid the expense and burden of litigation. In addition, Virgin Atlantic agrees to the assessment of \$14,000 in compromise of potential civil penalties. Of the total penalty amount, \$7,000 shall be due within 15 days of the

date of issuance of this order. The remaining \$7,000 will be forgiven unless Virgin Atlantic violates this order's cease and desist provision within one year of the date of its issuance or fails to comply with its payment provision, in which case the unpaid portion of the \$14,000 penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance by Virgin Atlantic, as well as by other carriers.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and find that the provisions of this order are in the public interest;
2. On or about June and July 1995, Virgin Atlantic promulgated or caused to be promulgated from England a series of fare advertisements in the carrier's home page on the Internet's World Wide Web which failed to disclose both the type and amount of the applicable taxes and fees and in at least one instance listed a fare that was not available;
3. We find that by engaging in the conduct described in paragraph 2, above, Virgin Atlantic violated 49 U.S.C. § 41712 and 14 CFR 399.84 ;
4. Virgin Atlantic, and all other entities owned or controlled by or under common ownership with Virgin Atlantic, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations, with respect to all its fare advertising, as described in this order;
5. Virgin Atlantic is assessed \$14,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraph 3 of this order. Of the total penalty amount, \$7,000 shall be due within 15 days of the date of issuance of this order. The remaining \$7,000 will be suspended and then forgiven unless Virgin Atlantic fails to comply with the payment provisions of this order or, within one year of the date of issuance of the order, it violates ordering paragraph 4. Failure to pay the compromise assessment as ordered will subject Virgin Atlantic to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of

the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in Attachment 1.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)